REMARKS

This application has been carefully reviewed in view of the above-referenced Office Action, and reconsideration is requested in view of the following remarks.

Regarding all Prior Art Rejections

By way of review, the prior Office Action indicated that claims 1-29 are currently pending. Claims 1, 15 and 28 are amended. Support for the amendments may be found in page 13, lines 23-25 of the as filed specification. Claims 1-29 stand rejected.

Telephone Interview Summary

The Applicants would like to thank Examiners Castro and Koenig for the telephone conversation conducted on January 27, 2009. Cited art was discussed. Differences between the cited art and the claimed subject matter were discussed. Clarifying claim amendments were discussed. No agreement was reached.

Advisory Action

Applicant makes no admissions as to any of the positions advanced in the Advisory Action. Applicant notes that the arguments made regarding the individual references are necessary to an understanding of a determination of the scope and content of the cited art. A deficiency in disclosure in that which is asserted to be present in a reference does not represent an argument against that reference individually as argued in the Advisory Action. Instead, such arguments point out flaws in the interpretation of the reference used in the combination rejection. If an element is asserted to be in a reference and it is not, then the combination subsequently fails. Nevertheless, the arguments presented reflect Applicant's position regarding the combination asserted to render the claims obvious. Reconsideration and allowance are respectfully requested. Applicant's position regarding the other issues raised in the Advisory Action are provided below.

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Regarding the Rejections under 35 USC 103(a)

Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flickinger et al. (US Patent Publication Number 2005/0210502, hereinafter "Flickinger") in view of Hoarty (US Patent 5,594,507). The Flickinger reference relates to a system and method for an ad storage and filtering system for selectively identifying targeted ads to be stored in memory of the STB. The Hoarty reference relates to a compressed digital overlay controller and method for MPEG type video signal. These rejections are respectfully traversed.

Regarding claims 1, 15, 26 and 28, these claims recite at least "receiving data representing video content, the data having a plurality of packet identifiers (PIDs) where each PID is associated with one or more macroblocks of original content", and claims 1 and 28 also recite "a substitution criterion has been met to substitute one or more macroblocks of original content." Claim 26 recites at least "means for initiating a packet identifier (PID) mapper that assigns a primary PID to the main content and assigns a secondary PID to the substitution content" and "means for receiving input data representing at least one macroblock of substitution content."

The Office Action admits on page 14 that the Flickinger reference does not disclose or teach which PID is the "original" content. However, this is not the only deficiency in the Flickinger reference. The Office Action seems to assert the Flickinger discloses the transmission of original content through the use of packet identifiers for both original content and substitution content by referencing paragraphs [0042] and [0077] of the Flickinger reference. However, the Office Action seems to be mis-interpreting the disclosure in paragraphs [0077] as disclosing a *packet identifier* (emphasis added) when it does not, and paragraph [0042] as disclosing content substitution when it simply discloses content insertion into the program stream when space is left in "avails" specifically created for the insertion of separate content. The cited paragraphs in the Flickinger reference do not disclose the recited elements of the claims as defined and recited in the as filed specification.

Applicant is allowed to be his/her own lexicographer, and the claim features must be interpreted in light of the as filed specification. In paragraph [0077] of the Flickinger reference

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the acronym PID is defined as "program identification…which carries the tag for the ad" to be inserted into an "avail." This is very different than the packet identifier (PID) as defined on page 6, in lines 1-14 of the as filed specification. A PID in the Flickinger reference defines a name or place-holder identification for an advertisement such that the ad may be accessed and placed, whole, into a waiting slot (an "avail") in the programming stream being received at a head-end television receiver. A PID in the as filed specification is an identifier for one or more packets of original content, representing any portion of the video stream such as, for example, I Frame packets, P frame packets, macroblocks of video data, or any combination of macroblock and frame data that might later be used to substitute for original transmitted video content. In addition, a Packet Identifier is also used to distinguish between two or more digital television signals that are encrypted using a multiple encryption algorithm. Thus, a PID may also be used to ensure data security as well as simply defining a pre-defined advertisement to be inserted into an open space in the transmitted stream of original content. Under this definition a PID as defined by Flickinger represents only pre-manufactured advertising content of the correct length to be inserted into one or more open slots in a received video content stream. There is no disclosure in Flickinger for the replacement of actual original content as represented by macroblocks of video content that may or may not be encrypted, and that may be used to replace original video content regardless of whether an "avail" has been prepared for the new substituted content to be inserted. Thus, Flickinger does not disclose a packet identifier, regardless of the fact that Flickinger uses the same acronym to name the program identifier in paragraph [0077], and does not disclose the substitution of original content using such packet identifiers as defined in the as filed specification and recited in claims 1, 15, 26 and 28.

Additionally, the Office Action seems to assert that "actual programming" is performed in the replacement of original content by substitute content based upon the disclosure in paragraph [0041] of the Flickinger reference. Once again, the Office Action is mis-interpreting the disclosure in the Flickinger reference. In paragraph [0041], the reference discloses the arrangement in time of the sequence of program content, the "actual programming" is the flow of original video content as it is arranged in time for presentation to a user. The claims recite the substitution of macroblocks of *original content* by macroblocks of *substitution content* as

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identified by packet identifiers, which requires programmatic processing of more than one incoming video stream in which portions of content not set aside as "avails" are freely substituted. This is very different than the simple logistics of arranging a program stream to insert data into pre-formed slots as disclosed by Flickinger in paragraphs [0041] and [0042]. Thus, the Flickinger reference does not provide the disclosure of at least the features of claims 1, 15, 26 and 28.

The Office Action looks to the Hoarty reference to overcome the lack of disclosure in the Flickinger reference, however, it does not. The Hoarty reference does disclose the replacement of macroblocks of video content with separate content. However, Hoarty is completely silent with regard to packet identifiers or their use in the substitution of original content in an identified content stream and thus does not cure this deficiency of the Flickinger reference. In addition, Hoarty is silent with regard to multiple streams of video content, and the programming effort necessary to determine that a substitution criteria has been met such that a data stream of original content may be replaced by the substitution of an identified second stream of video content as recited in claims 1, 15, 26 and 28. Thus, the Flickinger and Hoarty references, singly or in combination do not disclose or teach the claim elements recited, *inter alia*, of claims 1, 15, 26 and 28.

Thus, the combination of the Flickinger and Hoarty references does not provide the disclosure necessary to render claims 1, 15, 26 and 28 obvious. In view of this shortcoming in the rejection and failure to articulate reasoning to explain why the claims are obvious in view of a lack of such disclosure, the Office Action further fails to establish *prima facie* obviousness. For these reasons, reconsideration and allowance of claims 1, 15, 26 and 28 is respectfully requested.

Regarding claims 2-14, 16-25, 27 and 29, these claims are rejected over the combination of Flickinger in view of Hoarty. However, claims 2-14, 16-25, 27 and 29 each depend from one of claims 1, 15, 26 and 18. As such, the applicants submit that these claims are patentable over the combination of Flickinger in view of Hoarty for at least the reasons stated above. Accordingly, reconsideration and allowance are respectfully requested.

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Applicant makes no admission or concessions as to the accuracy of the Office Action's positions on any other matters and reserves the right to make other arguments at a later date if appropriate, but feels that the present arguments are more than adequate to address all rejections at present.

Interview Request

In view of this communication, all claims are now believed to be in condition for allowance and such is respectfully requested at an early date. If further matters remain to be resolved, the undersigned again respectfully requests the courtesy of an interview. The undersigned can be reached at the telephone number below.

Respectfully submitted,

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